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FILED
YOLO SUPERIOR COURT

APR 30 2010

By C. Ganett
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF YOLO

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

MARCO ANTONIO TOPETE,

Defendant(s)

Dept. 6 Case No. 08-3355

PEOPLE'S OPPOSITION TO
DEFENDANT'S MOTION
FOR CHANGE OF VENUE

DATE: May 21, 2010
TIME: 8:30 AM
DEPT: 6

The People submit the following opposition to the
defendant's motion for change of venue:

I.

THERE IS NO LEGITIMATE BASIS FOR A CHANGE OF VENUE IN THIS CASE

A trial court must grant a change of venue if "there is a
reasonable likelihood that a fair and impartial trial cannot be
had in the county" in which the charges were brought. California
Penal Code § 1033, subd. (a); see Sheppard v. Maxwell (1966) 384

1 U.S. 333, 362; People v. Bonin (1988) 46 Cal.3d 659, 672,
2 overruled on other grounds in People v. Hill (1998) 17 Cal.4th
3 800, 823; Maine v. Superior Court (1968) 68 Cal.2d 375. Among
4 the factors the trial court considers in ruling on a motion for
5 change of venue are "the nature and gravity of the offense, the
6 size of the community, the status of the defendant, the
7 popularity and prominence of the victim, and of course the
8 nature and extent of the publicity." People v. Massie (1998) 19
9 Cal.4th 550, 578; see also People v. Ramirez (2006) 39 Cal.4th
10 398,434.

11 The ultimate question for the trial court is "whether on
12 the peculiar facts of the individual case [citation] there is a
13 reasonable likelihood that the jurors who will be, or have been,
14 chosen for the defendant's trial have formed such fixed opinions
15 as a result of pretrial publicity that they cannot make the
16 determinations required of them with impartiality." People v.
17 Bonin, supra, at pp. 672-673. Defendant, as the moving party,
18 bears the burden of proof. Id. at p. 673. "A denial of a motion
19 for change of venue will be upheld on appeal unless the record
20 shows both that it was ' "reasonably likely [that] a fair trial
21 could not be had at the time the motion was made," ' and that it
22 was ' "reasonably likely a fair trial was not in fact had." ' "
23 People v. Massie, supra, at p. 578. "Reasonably likely" in this
24 context means something less than " ' "more probable than not,"
25 ' " but something more than "merely possible." People v.
26 Williams (1989) 48 Cal.3d 1112, 1126; see People v. Bonin,
27 supra, at p. 673.

1 In the case at hand, the defense has focused their motion
2 for change of venue exclusively on the fact that the victim in
3 the case was a Yolo County deputy sheriff and that deputies from
4 the same organization will provide security in the courtroom
5 during the trial. The defense's concern is that jurors may be
6 subjected to "undue pressure" as a result of the deputies' mere
7 presence in the courtroom. The defense cites no direct authority
8 in support of their argument in this regard.

9 In reality, the actual venue of a cop-killer trial matters
10 little when solely considering a prospective juror's expected
11 reaction to such a case. As the California Supreme Court has
12 explained: "Communities undoubtedly have special hostility
13 toward 'cop-killers' but that aspect of the case would follow
14 [defendant] to whatever community in which venue ultimately
15 resides." Odle v. Superior Court (1982) 32 Cal.3d at 942. Not
16 surprisingly, this is why courts have routinely held that the
17 killing of a police officer is not a fact by itself that
18 justifies a change of venue. People v. Jenkins (2000) 22 Cal.4th
19 900.

20 The defense does cite the case of People v. Gladden (1966)
21 385 U.S. 363, 365, for the proposition that bailiffs are
22 significant figures in a trial. However, the case is not on
23 point. In Gladden, the United States Supreme Court held that
24 statements of a bailiff to certain jurors that the defendant was
25 a wicked fellow, that he was guilty, and that if there was
26 anything wrong in finding defendant guilty the Supreme Court
27 would correct it, violated the Sixth Amendment of the Federal
28

1 Constitution. The mere presence of the bailiff to the jury was
2 not the issue.

3 On the other hand, in People v. Mendes (1950) 35 Cal.2d
4 537, the California Supreme Court held that the defendant was
5 not entitled to a change of venue from Colusa County on the
6 ground that he could not secure a fair and impartial trial in
7 the county where the trial was held because he was a foreign
8 national charged with murdering a Colusa County deputized
9 sheriff in a small community; where the jury was selected
10 without undue difficulty; where the trial did not take place
11 until approximately three months after the homicide; and the
12 newspaper accounts did not appear to be different from the usual
13 reporting of any homicide of the sort involved.

14 Although it was not specifically mentioned in the Mendes
15 decision, it can be reasonably inferred that Colusa County
16 Sheriff's Deputies served as bailiffs in the county courthouse,
17 just as deputy sheriffs do in every other county of California.

18 Ultimately, there is not a single discoverable case that
19 supports a change of venue based on the defense's theory.
20 Moreover, the sequestered voir dire process will provide the
21 defense with an opportunity to question prospective jurors on
22 this topic. Should the defense be successful in demonstrating
23 some persistent and prevailing prejudice or bias in the minds of
24 prospective jurors as a result of Yolo County deputy sheriffs
25 guarding the courtroom, the defense can then renew its motion
26 for change of venue. Odle v. Superior Court (1982) 32 Cal.3d
27 932.

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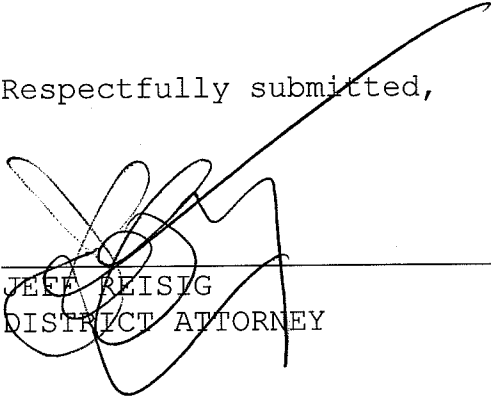
II.

CONCLUSION

For all the foregoing reasons, the defendant's motion for a change of venue should now be denied.

Dated: April 29, 2010

Respectfully submitted,



JEFF REISIG
DISTRICT ATTORNEY

SUPERIOR COURT NO. 08-3355

PROOF OF SERVICE

I, WENDY WILCOX, declare that I am a resident of the County of Yolo; I am over the age of eighteen years and not a party to the within entitled action; my business address is 301 Second Street, Woodland, California 95695.

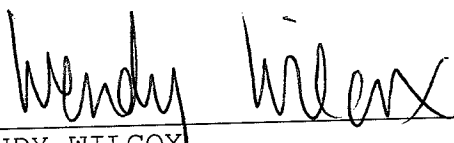
On April 30, 2010, I served the within PEOPLE'S OPPOSITION TO DEFENDANT'S MOTION FOR CHANGE OF VENUE on counsel for defendant in this action, by placing a true copy thereof enclosed in a sealed envelope and deposited the same in the United States mail at Woodland, California, addressed to the counsel of record in this action, as follows:

THOMAS PURTELL
ATTORNEY AT LAW
430 3RD STREET
WOODLAND, CA 95695

HAYES GABLE
ATTORNEY AT LAW
428 J ST., STE. 354
SACRAMENTO, CA 95814

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 30, 2010, at Woodland, California


WENDY WILCOX